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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/922,884
Filing Date: August 06, 2001
Appellant(s): MESAROS, GREGORY J.

David W. Grillo
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 10, 2009 appealing from the Office action mailed December 21, 2007.

This is in response to the appeal brief filed July 10, 2009 appealing from the Office action mailed December 02, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board’s decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

There was no amendment to the claims after final.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US Pat. 6,269,343	Pallakoff	07-2001
US Pat. 4,799,156	Shavit et al.,	01-1989

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims (Claim rejections on 35 USC 101 (i.e., claims 1-19, and 70-73), and claim rejections 35 USC § 112 second paragraph (i.e., claims 1-19, 43-47, 57-69, and 70-76) in the Office Action mailed on 12/21/2007 are withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

A. Claims 1-19, 43-47, and 57-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pallakoff (U.S. Patent No. 6,269,343), in view of Shavit et al. (US Pat. 4,799,156).

a. As to independent claim 1: Pallakoff discloses a system, comprising components to:

- electronically offering a product for sale (i.e., using a computer for selling/advertising - webpage 21, see Pallakoff, Fig. 1 ref. 12a, and col. 3 line 5 - col. 4 line 36);

- receiving a first order for the product at a first price - "including optional conditions" on a website (i.e., ordering 2 to 5 items: $10.00 - see Pallakoff, col. 3 line 46);

- receiving a second order for the product at a second price, the second price being lower than the first price (i.e., ordering 6 to 20 items cost $8.00 - see Pallakoff, col. 3 line 47; see also col. 2 lines 27-28; and col. 3 line 11 - col. 4 line 17); then a seller will make a final calculation (meanings a shipping price would be added (a customer has to pay that shipping cost) for a total cost of each order, see Pallakoff, col. 8 lines 41-46).

- Pallakoff teaches about "order aggregation" of buyers who may or may not known each other (see the abstract, and "Group Buy offer for a certain product" col. 9 line 57, Fig.3 block 37

"Price determined based on Aggregate Demand"), Pallakoff does not expressly disclose about sharing a shipping fee to reduce a cost for the product; although he clearly shows of different prices (including a shipping fee) are depending on order quantities (see Pallakoff, Fig. 6 ref. 68).

- However, Shavit et al. clearly disclose (in col. 17 lines 17-27) about a suggestion of sharing a shipping cost between involved parties:

*"As an additional service, a supplier who has scheduled a shipment of less than a truckload on a particular route, may advertise the available space on the system bulletin board thereby enabling other shippers to share the freight costs. The supplier may limit the type or identity of shippers who may share the route with it utilizing the system 50. Thus, the system 50 can serve as the primary communications link between a supplier and its carriers. Using services available through the system, such as conversational sessions, the alert feature, and mail services provides unique efficiencies in the supplier's freight departm*ent.").

The examiner also respectfully submits that a well-known example of "delivery lunch" to an office with many different plates for many employees (of a building's address) from a local Chinese restaurant read-on the claim idea of

"different buyers sharing a shipping cost", i.e. a delivery fee for lunch meals that ordered together in a list is different, and is cheaper than the cost for shipping/delivery from that same restaurant to different individual orders separately for that lunch.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to combine Pallakoff''s system and Shavitt et al.'s idea to suggests a system to calculate/charge a lower price for customers (including shipping price for that order - usually an order's shipping cost is calculated from weight/size of that order, it is well-known to include many different orders in one package for the advantage of to avoid standard charges for separate orders; especially many employees of the same office order different products in a list from that same office) - note that this claim is merely a software to calculate a lowest price for customers including shipping prices determinations according to USA zip-code for shipping to because according to the above Chinese restaurant well-known example (according to KSR decision), ordering together would save shipping fees comparing to making separate orders.

Note: The language in claim 1 could be pretty broad because "at least in part upon the subset of buyers" means just only one

buyer (e.g., a subset of buyers is five, claimed language says "at least in part" = one buyer), as:

A system for facilitating volume pricing, comprising:

an offers and orders component that receives and aggregates orders for a product from a plurality of buyers; and

a logistics component that determines a shipping price for the product for a subset of the plurality of buyers, the shipping **price** being determined at least in part upon the subset of buyers sharing a shipping method.

b. As to dependent claim 3: Pallakoff suggests a system to receiving different orders from different parties, and manages (by storing, calculating) those information (see Pallakoff's Internet configuration, Fig. 1 refs. 13, 14a - 14d).

c. As to dependent claims 4-5: Pallakoff shows an access control component (including sending messages/notices to sellers, and buyers/users, see Pallakoff, Fig. 1 ref. 13, and Fig.3 refs. 37-38 "Seller notified and products shipped/Buyers notified and billed").

d. As to dependent claims 6, and 59-60: Pallakoff's system inherently comprises a term and detailed conditions component to manage agreements between buyers and sellers (see Pallakoff, the abstract's "conditional offers", and col. 1 line 55 - 58).

Note that these are system claims comprising physical components (as their limitations).

e. As to dependent claims 7, 12-13, 62-65, 68: Pallakoff inherently teaches a blanket pricing component to manage agreements between buyers and sellers as to product prices (i.e., a tabulated cost/fee definition for references including pricing conditions, and related information about products via a webpage), managing accounts/access (i.e., "maintaining a deposit account with the system operator", and providing decision supports to buyers/sellers - see Pallakoff, Fig. 1 ref. 13 – the "System Controller 13" performs above claimed functions).

The examiner submits that providing different level of access to different activities are well-known to one of ordinary skill in the art (as in pending claim 64) for an advantage of easy controlling users/buyers' activities (e.g., read permission, or write permission).

f. As to dependent claims 11, and 66-67: Pallakoff discloses that a system controller 13 comprises a Request-for-price (RFP) component operable to manage product requests (i.e., a query via email from a buyer to a seller/a different computer - see Pallakoff, Fig.1).

g. As to dependent claims 14, and 19: Pallakoff discloses a system with terminal 12 and terminal 14 representing a seller

agent, and a buyer agent; Pallakoff also inherently teaches that his system creates an order for a buyer according to a buyer's request (see Pallakoff, col. 11 lines 44-46).

h. As to dependent claim 16: Pallakoff inherently teaches that a system controller 93 gives detail information of a seller in an offer (i.e., name of a seller is given to a buyer - see Pallakoff, Fig.1 ref. 13, and Fig.3 ref.37).

i. As to claims 43, 57-58: Pallakoff discloses a system for volume pricing (see above rationales of rejected claim 1), comprising:

- a server configured to receive orders for a product from a plurality of different buyers via at least one remote computer system, the server comprising "physical components":

- a processor;

- a memory coupled to the processor; and

- a network interface coupled to the processor for transmitting and receiving data with a remote computer system (see Pallakoff, Fig.1).

Pallakoff does not expressly disclose "specific contents" of a memory (e.g., different price schedules, a specific term); however, the examiner respectfully submits that Pallakoff sufficiently provides structural components (as listed above) to build up the claimed system.

- Pallakoff does not expressly disclose about sharing a shipping method (i.e., sharing a delivery fee to reduce a cost for a product).

- However, Shavit et al. suggest that in col. 17 lines 17-27.

The examiner also respectfully submits that a well-known example of "delivery lunch" to an office with many different plates for many employees from a local Chinese restaurant read-on the claim idea of "different buyers sharing a shipping cost", i.e. a delivery fee for lunch meals that ordered together in a list is different and cheaper than the cost for shipping/delivery from that same restaurant to different individual orders separately for that lunch.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to combine Pallakoff's system and Shavitt et al.'s idea to suggests a system to calculate/charge a lower price for customers (including shipping price for that order - usually an order's shipping cost is calculated from weight/size of that order, it is well-known to include many different orders in one package for the advantage of to avoid standard charges for separate orders; especially many employees of the same office order different products in a list from that same office) - note that this claim is merely a

software to calculate a lowest price for customers including shipping prices determinations according to USA zip-code for shipping to because according to the above Chinese restaurant well-known example, ordering together would save shipping fees comparing to making separate orders.

It would have been obvious to one of ordinary skill in the art at the time of invention to implement Pallakoff's structure with a suggestion of Shavit et al. to contain a first price schedule and a second price schedule due to these schedules are merely "written material" that do not significantly change the claimed structure of Pallakoff (also note that a common practice of "share-shipping" has been widely used as above Shavit et al.'s practice).

j. As to dependent claims 44-45: Pallakoff obviously suggests that a first and a second price are determined according to a quantity of product ordered (i.e., ordering 2 to 5 items: $10.00 - see Pallakoff, col. 3 lines 45- 47); or depending on when an order is placed (see Pallakoff, Fig.3 ref. 32, the abstract, and claims 1, 8) - also note that this claimed limitation is obvious because it is a non-functional description material (a computer code for a memory component).

k. As to dependent claim 46: Pallakoff discloses a system wherein different buyers access to view detailed product

information (e.g., the first and second price schedules) via remote computes (i.e., a hierarchy layer between computers, see Pallakoff, Fig.9 ref. 96) - moreover, it is common sense to display/monitoring detailed materials/data because a user always want to know detailed information before making an order of a product.

l. As to dependent claim 47: Pallakoff discloses a system controller 13 comprising a memory storage to receiving orders wherein a server being configured to limit a period during which orders for the product are accepted to an open session period - a non-functional detail description material: a limited time requirement to order a product for a specified price is a common practice (see Pallakoff, Fig.3 ref. 32, and claims 1, 8).

m As to dependent claim 2: This claim is merely directed to a system as in claim 1, comprising a product catalog - the examiner respectfully submits that this claimed feature is a well-known practice in advertising about what are selling by a store/site.

Pallakoff discloses a system to order a variety of products (see Pallakoff, Fig.1 refs. 12a-12x).

Pallakoff does not disclose a catalog of products in his system.

However, a list of products (a catalog) would have been available for customers to make selections, and knowing that product's availability, and price .etc., those information would have been obvious to one of ordinary skill in the art at the time of invention as "a catalog" means containing related information of provided products for related references (e.g., to a buyer/customer).

n. As to dependent claims 8-10: Pallakoff also discloses a system comprising a product database (e.g., system controller 13 consists of server hardware running database software).

He does not disclose "a product relationships component" to manage relationships between products (a byproduct relationship - e.g., a flash light and AA batteries for that flash light, or a monitor screen and a desk-top computer system, or a NEC monitor screen 17" versus a NEC monitor screen 20")

However, this feature can be "a recommendation" (e.g., buying a flash light should buy AA batteries to use with it); it would have been obvious to one of ordinary skill in the art at the time of invention to implement Pallakoff's structure to use a relational database (or a recommendation) instead of a regular database for "linking" between products because a cross-relational database is merely "written material"/database that do not significantly change Pallakoff's system.

o. As to dependent claims 15, 18, and 69: Pallakoff does not disclose that his system uses customer's historical data to determine a price.

However, it was old and well-known that customers' historical data/profiles have been widely used for selling products (e.g., a Circuit City store uses customer's phone number to trace a consumer's history, and Best Buy stores give discount coupons (a different price) to past customers having certain buying histories in their database) - a motivation for using customer's profile for determining a discount/coupon/price to encourage regular visitors for doing more business with those stores (note that claim 18's "to assist at least one of the plurality of buyers in finding a best buy for at least one of a plurality of products" is merely an intent of use of a "system" claim - this should not be a claim's limitation).

It would have been obvious to one of ordinary skill in the art at the time of invention to implement a combination of Pallakoff and Shavit's systems for utilizing widely used customer's historical data to determine a pricing strategy (discount/coupon) of a product with respect to a buyer.

p. As to dependent claim 17: Pallakoff suggests that his system could provide information of a production schedule (e.g., delivery time) via system controller 13.

The motivation is that detail information about a production schedule has been informed to buyers for anticipation/preparation of their own events.

q. As to dependent claims 73, and 76: The rationales and references for claim 1 are incorporated.

The examiner respectfully submits that claimed limitation of: "*an order from at least one of the plurality of buyers is independent from other order received*" is interpreted as: "an order from a buyer is independent from others" - this has been well-known; e.g., S/H fee to a same address for a BIG box/package (from a store) with different sub-orders from several employees in an office.

The motivation is that detail information about each particular order has been listed to different buyers for clear details of charges on each item; a S/H cost can be easily divided among ordered people later on (as in a Chinese restaurant's delivery example).

r. As to dependent claims 70-72, and 74-75: The examiner respectfully submits that these claims are directed to "a logistic component" (i.e., perform calculating in a system) about facilitating shipping aggregation for buyers, i.e., creating savings when order.

Pallakoff and Shavit et al., suggest a system to perform that task for buyers' saving (see Pallakoff, Fig.1 ref. 13, and see Shavit et al., col. 17 lines 17-27).

It would have been obvious to one of ordinary skill in the art at the time of invention to combine Pallakoff''s system and Shavit et al.'s idea to suggest a system to calculate/charge a lower price for customers (including shipping price for that order - usually an order's shipping cost is calculated from weight/size of that order, it is well-known to include many different orders in one package because those orders go to a destination for the advantage of to avoid standard charges for separate orders; especially many employees of the same office order different products in a list from that same office).

s. As to dependent claim 61: The examiner respectfully submits that it would be obvious to add in Pallakoff's system "a forum" to exchange opinions among buyers before making orders.

(10) Response to Argument

A. *Rejection of Claims 43-47, 57-69, and 74-76 Under 35 U.S.C. §112*

These rejections are withdrawn; therefore, arguments on these issues are moot.

B. Rejection of Claims 1-19, 43-47 and 57-76 Under 35 U.S.C. §103(a):

Claims 1-19, 43-47 and 57-76 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pallakoff (US 6,269,343), in view of Shavit, et al. (US 4,799,156, hereinafter referred to as "Shavit").

Because "the name of the game is the claim"; prior art already teach claimed features as analyzed in above rejections. It would be obvious for one with ordinary skill in the art to implement cited references to suggest steps about "order/demand aggregation" with Internet assistance as claimed.

Applicant argues that cited references do not teach or suggest "a logistic component"; however, according to claimed language (this should also be a physical thing as claim 1 is directed about a system), this is merely a calculating step that a general calculator can perform.

There are 2 pending independent claims for this appeal; the examiner submits that claim 1 is the broadest claim (of the two pending claims), and the only concept for this claimed method is "sharing cost of shipping"; however, the language of this claim recites "the shipping price being determined based at least in part upon the subset of buyers sharing a shipping method" - e.g., the shipping price being determined based upon a buyer - this is extremely broad.

Since, the provided rationales for rejections in section 9 (Grounds of Rejections) are considered proper. The examiner respectfully submits they should be applied herein.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/CUONG H. NGUYEN/

Conferees:

SPE Thomas Black /tgb/

Heather Shackelford /hcs/